

6149. Misbranding of Dr. J. H. McLean's Liver and Kidney Balm. U. S. * * * v. The Dr. J. H. McLean Medicine Co., a corporation. Tried to the court and a jury. Verdict of guilty. Fine, \$200 and costs. Case pending on appeal in the United States Circuit Court of Appeals for the Eighth Circuit. (F. & D. No. 7760. I. S. No. 11107-1.)

On January 16, 1917, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against The Dr. J. H. McLean Medicine Co., a corporation, St. Louis, Mo., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about July 30, 1915, from the State of Missouri into the State of Texas, of a quantity of an article labeled in part, "Dr. J. H. McLean's Liver and Kidney Balm," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that the product was a weak alcoholic preparation, containing small amounts of vegetable extractives and of sugar and a trace of carbonates.

It was alleged in substance in the information that the article was misbranded for the reason that certain statements appearing on the label on the bottles and cartons falsely and fraudulently represented it as a remedy for the treatment of diseases and disorders of the liver, kidney, and urinary organs; dropsy, inflammation of the kidneys and bladder, incontinence of urine, bed-wetting of children, rheumatism, leucorrhea or whites, irregular menses, weakness in urinary organs, and pains in the back, when, in truth and in fact, it was not. It was alleged in substance that the article was misbranded for the further reason that certain statements included in the circular accompanying the article falsely and fraudulently represented it as a remedy for the treatment of gall stones, diabetes, and Bright's disease, as a remedy for difficulty in passing urine and suppression and retention of urine, as a remedy for the treatment of rheumatism and as a cure for rheumatism, as a remedy for the cure of gout, sciatica, lumbago, and neuralgia, and as a remedy for gravel, and female diseases and disorders, when, in truth and in fact, it was not.

On May 17, 1917, the case having come on for trial before the court and a jury, after the submission of evidence and arguments by counsel, the following charge was delivered to the jury by the court (Trieber, *D. J.*) :

Gentlemen of the Jury : For the purpose of protecting the health of the people, Congress in its wisdom has seen it proper to enact the law making it an offense for anyone to ship from one State or Territory to another State or Territory within the United States, any impure foods or drugs. The Act of Congress describes what act shall be deemed a violation of this law, and among others it provides that for the purposes of this Act an article shall be deemed to be misbranded if its package or label shall bear or contain any statement, design, or device regarding the curative or therapeutic effects of such article or any of the ingredients or substances contained therein which is false and fraudulent. The defendant is charged by the information filed in this case with having violated that provision of the Act by having sent on July 20, 1916 [July 30, 1915], from the city of St. Louis in the State of Missouri, to a certain firm which is mentioned in the information, at Dallas, in the State of Texas, twelve bottles of its medicinal preparation which it is alleged contained on its label on the cartons in which the bottles were placed, and circulars accompanying them, the statement or claim that the use of this medicine in the manner prescribed therein, the doses, would arrest or retard a large number of diseases which are mentioned therein. Before going into this particular case, I would call your attention to certain general principles of law which apply to every criminal case tried in the Court of the United States. The law is merciful, it wants no person or corporation convicted of an offense unless, it says, every material allegation in the indictment or information is established by evidence which satisfies the Jury trying the case beyond a reasonable doubt of the truth of these allegations. But I want to say in this

connection in order that you may not be misled, that what the law means by a reasonable doubt is a rational doubt arising in the minds of reasonable men from the evidence of the case and which no other evidence removes, or from an insufficiency of the evidence a mere possible doubt which has upset the minds of some men on all occasions, a doubt which may be suggested by the ingenuity of counsel, or a doubt which may suggest itself in the minds of some jurists by reason of sympathy, but which is not warranted by the evidence in the case, is not a reasonable doubt and must not influence your verdict. The law goes further in its mercy. It says not only must these allegations and the guilt of the defendant be proven by the Jury beyond a reasonable doubt, but in order to justify a verdict of guilty, it is necessary for the Government to prove the allegations in the indictment in the manner in which they are charged. Although the evidence may show that a man is guilty of some offense, but if it is not the offense which is charged, or if it was not committed in the manner in which it was charged in the indictment or information, then the law says that the defendant is entitled to a verdict of not guilty. These are the general principles of law which are to govern the juries in the trial of every criminal case of the Court of the United States.

Now, the first important question for you to ascertain is, what are the material allegations in this information which must be proven beyond a reasonable doubt by the Government before you can render a verdict of guilty. These material allegations are, that the defendant is a corporation existing under the laws of the State of Missouri. At the time charged, in July, 1916, it did ship twelve bottles or any number of bottles, the number would be immaterial, from the City of St. Louis in the State of Missouri, to the person mentioned in the information at Dallas, in the State of Texas, therefore a State other than that where the shipment was made, of this preparation, and that the bottles contained, had attached to them a label which contained the claims set out in the information. That they were in cartons which contained the language charged and set out in the information, and also accompanied by circulars containing the language set out in the information. In order to enable you to determine this fact without going into it now, in charging you, the Court will permit you to take with you the information, the labels on the bottles, the cartons in which they were, and also the circulars accompanying them. The Government must further prove that the claims made in these circulars, labels, and cartons were false, and in addition thereto, that they were made fraudulently. Now, those are the material allegations in the information, every one of which must be established by the Government beyond a reasonable doubt before a verdict of guilty can be returned by you. Counsel have stipulated as to the truth of some of these allegations so that it was unnecessary to introduce evidence as to them, and you may consider them as having been established beyond a reasonable doubt. Counsel for the defendant agreed that this defendant was at the time a corporation existing under the laws of the State of Missouri. That it did make at the time alleged this shipment of the twelve bottles to the firm mentioned in the information, in the City of Dallas, State of Texas. That these bottles had the labels on them and were put in cartons or boxes and were accompanied by circulars which contained the language set out in the information. Therefore, gentlemen of the jury, the only questions which are submitted to you and which must be determined by you for the purpose of deciding what your verdict shall be are: first, does the language used on the labels, cartons, or circulars accompanying the preparation, giving it such meaning as an ordinary intelligent person reading it would give it, show that the defendant claimed that the use of the preparation in the manner and the doses directed therein would arrest or retard the progress of the diseases which are mentioned therein; second, if it does, then the next question to be determined by you is whether they were false; if you find that they were false, you are next to determine whether they were fraudulent. To justify conviction or a verdict of guilty, you must find all of these three issues for the Government. Otherwise your verdict should be not guilty. For the purpose of determining whether the labels on the bottles and the cartons and the circulars accompanying them contain statements that the use of the medicine in the doses mentioned would arrest or retard all the diseases mentioned therein, you should take into consideration all the language used therein, interpreting it as an ordinary intelligent man would, and from it determine whether it was the intention of the defendant to lead such persons who would read them to believe that the medical preparation, if taken in the manner prescribed in these circulars or labels, would arrest or retard the progress of the numerous diseases mentioned therein, although the language does not in direct terms say

so. If you further find that they were false, as I will explain to you later on what is meant by false, in so far as this preparation would not arrest or retard the diseases mentioned therein or any of them as claimed by the defendant, and that these false representations were made by the defendant for the fraudulent purpose of inducing people suffering from any of these diseases to purchase the preparation for the purpose of obtaining relief or a cure, then the defendant would be guilty of this charge. The meaning of the word false in this statute is that a person states that to be true which he knows to be false or which he has no reason or reasonable cause to believe to be true. When a person makes claims of cures or beneficial effects from the use of a certain medicinal preparation, he may be held to good faith in his statements, and if made with actual intent to deceive, an intent which may be derived from the facts and circumstances in the evidence, they are fraudulent. Fraudulent intent, as any other intent, is frequently a matter which cannot be proven by direct or positive testimony. Of course, it is a matter of the mind, a state of mind is itself a fact, and false and fraudulent representations may be made about it, and persons who make substances or compositions alleged to be curative or beneficial are in a position to have superior knowledge, and may be held to good faith in their statements. There is another fact which the parties have agreed on so that it requires no proof. The defendant or his counsel have read to you the ingredients which make up this medicine. There are a large number of ingredients possessing medicinal qualities. The Government has admitted that the preparation is compounded of the materials and in the quantities as stated by Judge Crum when he opened the case. So there is no dispute as to what it contains. Now, the first question, as I stated to you, is what the language is and how it should be interpreted. It is unnecessary, gentlemen of the jury, for me to go into this matter, because I believe you are just as well qualified, perhaps better than I am, to determine what you think the language used in these circulars and labels means. So that will be a matter which the Court leaves entirely to you without giving any expression. If you find that a reasonably intelligent person reading them would believe that by the use of these medicines a person suffering from any one of these diseases, and the diseases are quite numerous, which are mentioned therein, for which this medicine might be taken with beneficial effect: diseases of the liver, kidneys and urinary organs, dropsy, inflammation of the kidneys or bladder, incontinence of urine, bedwetting of children, rheumatism, leucorrhea or whites, irregular menses, weakness in urinary organs, pains in the back, gallstones, diabetes, difficulty in passing urine, suppressing or retention of urine, gout, lumbago, sciatica, neuralgia, gravel, female diseases and disorders. Were these statements false, that is, did the defendant know that it would not cure all of these diseases? And in this connection it is proper for me to say that it is not necessary for the Government to prove, before you can find a verdict, that they are false as to all of these diseases. It is sufficient if you find from the evidence that they are false as to any one or more of these diseases, although they may not be false as to all of them. Now, were they false? As I stated to you before, they may be found to be false if the defendant knew that they would not have the effects claimed for every one of these diseases, or if the statements were made not knowing that they would have that effect. A person who makes a statement which he doesn't know to be true, makes a false statement just as much as a man who makes a statement which he knows to be false. The Government for the purpose of establishing its case has introduced four physicians. They belong to three different schools of medicine. One of them belongs to the school known as the eclectic school of medicine, one of them belongs to the school known as the homeopathic school of medicine, and two of them to the regular school of medicine, usually spoken of as the allopathic. All of these four found—something unusual, but the doctors seem to agree in this case—every one of them testified that while the ingredients possess curative properties, yet when compounded, all of them put together, they would not cure, arrest, or retard the progress of a single one of the diseases mentioned therein. That a great many diseases can't be cured at all by any kind of medicine. They testified that almost each one of these diseases may be caused by different causes and from different causes, and until it is ascertained what caused that particular disease, it is impossible to prescribe and tell what medicine should be taken, or what medicine can be of benefit at all. They say that liver diseases, some of them may be tubercular, some of them may be caused from one cause and some from another cause, in fact, they went through every one of these various diseases and showed how different they were. They say as to

removing gallstones, if the gallstones happen to be very small they may be removed, that is, they may by the use of medicine be caused to pass through some of the organs of the body, but at the most severe pain, but if the gallstone is quite a large stone, as is frequently the case, then it is utterly impossible for it to be passed off by the use of medicine, because there is no organ which is large enough to permit it to pass, and that they can only be removed by an operation, or as one of them expressed it, by the use of the knife. I am not going to review all the testimony of these physicians. You have heard it and know just as much about it as I do. There has been no testimony introduced by any other physicians or persons who are qualified to testify as experts to dispute the testimony of these witnesses. But I want to say this to you, gentlemen, that the testimony of experts, even if not contradicted, is not conclusive on the Jury. You are the final arbiters to determine the facts, but for the purpose of aiding you, that testimony has been introduced because owing to the fact that these men have received a medical education at well established medical schools, and have practiced the science of medicine for years, some of them for over 30 years, is a matter to be considered by you for the purpose of determining what weight you shall give to their opinions. Therefore, you should consider what weight you should give it, their knowledge and experience, their manner of testifying, whether they were prejudiced or not. Now, the question was asked some of these expert physicians whether they were not prejudiced against the use of all proprietary medicines. They said, no, but they think that if given indiscriminately without examination of the causes of the disease and especially if they are to be given for a large number of diseases, different entirely from each other, then it is unwise to use them, and, for that reason, they would not advise anyone to use them; or, they say they are prejudiced simply against such medicine as is harmful instead of being beneficial. Now, those matters, gentlemen, are to be considered by you for the purpose of determining what weight you shall give to the testimony. Now, then, the next question is, did the defendant know that they were false, or did he not know that they were true. The only evidence that has been introduced on the part of the defendant as to that was the recipe for this medicine was prepared by one Dr. McLean, whose picture was hanging in the office or laboratory of this defendant. Dr. McLean is dead, and the diploma exhibited here shows that he had been a graduate of a medical school, graduated in the 60's. There is no evidence whether Dr. McLean ever practiced medicine, whether he had any other medical experience or not, and that this medicine is the same that has been made ever since. I want to say to you, gentlemen, that until August 23, 1912, it was not an offense for anyone to send medicine from one State to another, containing labels which were false or fraudulent. It is only since 1912 that the law was passed under which this charge has been brought. Now, the president of this defendant has testified that, but he hasn't said that he knows anything about the medicinal qualities of this preparation. A gentleman who is a chemist has testified that he examines it after it is made, not for the purpose of ascertaining what its medicinal virtues are, what it will cure, but for the purpose of determining the quantity of alcohol which is in it, which under the law must appear on the label. Then another gentleman testified that he has been in the defendant's employ for 32 years, that he mixes this medicine, but he didn't testify that he knew anything about the virtues of the medicine. Now, gentlemen, it is for you to determine whether upon this evidence you believe that they were false within the meaning of the law. If you find these two issues in favor of the Government, then the next issue to be determined is whether it is fraudulent. If a person makes false statements for the purpose of inducing another to purchase such preparations from him in the belief that they will cure or arrest, retard, or relieve him to some extent from the ailment which he suffers, anyone of these ailments mentioned, which he didn't know to be true, and therefore were found to be false, then you are justified in finding that it was for the fraudulent purpose of inducing people to buy the medicine from him. As I stated to you before, gentlemen of the jury, before you can find a verdict of guilty, you must find every one of these three issues in favor of the Government. If you don't find them in favor of the Government, if you don't believe that the evidence justified it, or if, as reasonable men, you have a rational doubt in your minds whether anyone of these three issues should be found in favor of the defendant, then, gentlemen of the jury, the defendant is entitled to the benefit of that reasonable doubt, and your verdict should be, not guilty. If, on the other hand, you have no such doubt and are satisfied beyond a reasonable doubt that the defendant did commit these acts, as

charged, and find these three issues, every one of them in favor of the Government, then, gentlemen of the jury, under your oath it is equally your duty to return a verdict of guilty. You may retire, gentlemen, to consider. Take the circulars and cartons with you, gentlemen.

The jury thereupon retired and, after due deliberation, returned into court on May 18, 1917, with a report that they were unable to agree to a verdict, and were thereupon discharged from further consideration of the case.

On December 14, 1917, the case was again brought on for trial before the court and a jury, and after the submission of evidence and arguments by counsel the following charge was delivered to the jury by the court (Dyer, D. J.):

Gentlemen of the jury, there are some allegations in this complaint that have been admitted and about which there is no controversy. It is admitted that the defendant is a corporation organized under the laws of the State of Missouri and has its principal business office in the city of St. Louis. It is also admitted that the shipment charged in this information as being shipped to Dallas, Tex., was a shipment in interstate commerce, and was made at the time alleged in the information. It is practically admitted that the compound shipped contained the specific drugs that are mentioned in the complaint. There is no question about that.

On June 30, 1906, Congress passed what is known as the Pure Food and Drugs Act. This Act of Congress, like all other Acts of Congress, is important, and it is the duty of the Court, the duty of the jury, and the duty of everyone to uphold that Act. Speaking for myself, I do not believe that Congress ever enacted a more salutary statute than the one under consideration. When it was passed in 1906 that statute contained a provision as follows:

"Section 8. That the term 'misbranded' as used herein, shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, Territory, or country in which it is manufactured or produced."

You will see from Section 8 of the original Act which I have read, that it treated only of the misbranding of these articles by stating falsely what had entered into the composition of the food, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, Territory, or country in which it was manufactured or produced. If section 8 of the statute, to which I called your attention, were the only provision of the law, then as a matter of course this particular prosecution could not be maintained. However, with a view of meeting cases similar to this, Congress amended that Act on August 23, 1912, which amendment, so far as it applies to this case, is as follows:

"Third. If its package or label shall bear or contain any statement, design, or device regarding the curative or therapeutic effect of such article, or any of the ingredients or substances contained therein which is false and fraudulent * * *"

That was the amendment to the Act made in 1912, and it is under the provision of the Act as it now stands that the information in this case was lodged. I am not relying alone upon my own judgment or construction of the Act as to the effect of this amendment and the character of the Amendment, but I rely upon and agree with the declaration of the Supreme Court of the United States as to the scope and extent of this amendment.

As you will remember, the amendment contains these words, "which is false and fraudulent." The allegation must be shown to have been false. It must be shown to have been fraudulent. Of this phrase, "false and fraudulent," the Court says as follows:

"This phrase must be taken with its accepted legal meaning, and thus it must be found that the statement contained in the package was put there to accompany the goods with actual intent to deceive, an intent which may be derived from the facts and circumstances, but which must be established. That false and fraudulent representations may be made with respect to the curative

effect of substances is obvious. It is said that the owner has a right to give his views regarding the use of his drugs, but state of mind is itself a fact and may be a material fact, and false and fraudulent representations may be made about it, and persons who make or deal in substances or compositions alleged to be curative are in a position to have superior knowledge, and may be held to good faith in their statements."

This information charges, after setting out all that accompanied these bottles, and about which there is no controversy, it being admitted that all that is charged in the information as to certain things that went with the bottle are true, among other things,

"That when shipped and delivered for shipment as aforesaid, said article of drugs was then and there misbranded within the meaning of said Act of Congress, as amended, in that the following statements regarding the therapeutic or curative effects thereof appearing on the label, to wit, on carton, 'Dr. J. H. McLean's Liver and Kidney Balm * * * For the treatment of diseases and disorders of the liver, kidney and urinary organs.' * * *;

"On bottle 'Dr. J. H. McLean's Liver and Kidney Balm * * * For the treatment of dropsy * * * Inflammation of kidneys or bladder, incontinence of urine, * * * bed-wetting of children, rheumatism, leucorrhea or whites, irregular menses, weakness in urinary organs, and pains in the back,' were false and fraudulent in this, that the same were applied to said article knowingly and in reckless and wanton disregard of their truth or falsity, so as to represent falsely and fraudulently to the purchasers thereof, and create in the minds of purchasers thereof the impression and belief that the article was, in whole or in part, composed of, or contained, ingredients or medicinal agents effective, among other things, as a remedy for the treatment of diseases and disorders of the liver, kidney, and urinary organs, and effective as a remedy for the treatment of dropsy, inflammation of the kidneys and bladder, incontinence of urine, bed-wetting of children, rheumatism, leucorrhea or whites, irregular menses, weakness in urinary organs, and pains in the back, when in truth and in fact, said article was not, in whole or in part, composed of, and did not contain, ingredients or medicinal agents effective, among other things, as a remedy for the treatment of diseases or disorders of the liver, kidney or urinary organs, or effective as a remedy for the treatment of dropsy, inflammation of the kidneys or bladder, incontinence of urine, bed-wetting of children, rheumatism, leucorrhea or whites, irregular menses, weakness in urinary organs, or pains in the back.

"That when shipped and delivered for shipment as aforesaid, said article was further misbranded in that the following statements regarding the therapeutic or curative effects thereof, included in the circular aforesaid, to wit:

"Gallstones * * * Dr. J. H. McLean's Liver and Kidney Balm will aid in dissolving gallstones so that they may pass away."

That is one of the several things contained in this information. The second is,

"Rheumatism * * * For the treatment of rheumatism take Dr. J. H. McLean's Liver and Kidney Balm. * * * This medicine helps in restoring the kidneys to a healthy condition so that the urine will not contain too much uric acid, and in that way rheumatism is cured.

"Gout, sciatica, lumbago and neuralgia * * * The treatment for them should be the same as for rheumatism," and so on.

You will see what is charged in this complaint. The testimony of the physicians introduced here by the Government, I may say tends to prove in a measure, I do not say it does prove, but the testimony was offered to show that this particular compound containing these particular ingredients would not do what is represented it would do. That was for the purpose of ascertaining, in the first place, whether the statements made in the circular were false or were true, and that is the matter for you to decide. If you decide they were false, then you have taken one step in disposing of this case. If the statements were true, and the compound will do what the statements claim for it, then that is the end of the case, and your verdict will be for the defendant.

If you find from the testimony that is before you that those statements were false, the next step is to see whether they were fraudulent or not, taking the two, false and fraudulent. If you find that the statements were false and fraudulent, then as a matter of course your verdict will be for the Government. If you find the statements were false but not fraudulent, under that state of fact you would find for the defendant, because you must find the two: in the first place it must be false, and in the next place it must be fraudulent. In

determining the question as to whether or not the statements were fraudulent you may take into consideration all the facts and circumstances that have been introduced in evidence. You are the judges of the testimony.

There is another well-settled principle involved in this case and in every case, and that is that one who makes a false statement, not knowing whether it is false or true, is as guilty of wrong as the man who makes a false statement knowing it is false. No one may be permitted to make statements recklessly not knowing whether they are true or false, put these statements out, and then say he did not know whether or not it was false.

It is not necessary that the Government should prove that all the statements on the label or in the circular were false and fraudulent. If you believe beyond a reasonable doubt that any one or more statements as to the curative or remedial properties of this medicine was false and fraudulent, and that the defendant knew it was false, you may find the defendant guilty. If you find, as a matter of fact, that the statements were false, and by the defendant known to be false, then your verdict will be for the Government. If you find as a fact that the statements were not false, or, being false, there was no intent, whether actual or implied, upon the part of the defendant to defraud, then your verdict will be for the defendant.

If you believe from the evidence that any one of the claims as to the therapeutic effect of this medicine upon gallstones, diabetes, Bright's disease, gravel, rheumatism, and the other diseases mentioned in the information, was false, and was made by the defendant with a reckless and wanton disregard as to whether it was true or false, you may from that fact, and from other facts connected with the case, find the defendant guilty.

In determining the intent of the defendant take into consideration all the facts and circumstances of the case and determine whether or not it was the intention that this language, interpreting it as ordinary intelligent men would, should convey the impression that the medicine was to cure, or act as a remedy for the diseases or ailments mentioned, even where the language does not directly say so. If it was the intention, so framed or stated, that it convey those impressions, and those statements were false, and known by the defendant to be false, or, if from all the circumstances in the case you find there was an intention to defraud, then it would be your duty to return a verdict of guilty. If you do not find that intention of course you will return a verdict of not guilty.

After the admissions were made in this case as to sending this medicine in interstate commerce to the State of Texas, and after the admission of the other facts that I have mentioned, the Government relied upon the evidence of three physicians. The evidence of those men as experts is to be taken by you as the testimony of expert witnesses, by which you are not necessarily bound. The testimony of experts is not conclusive, even if not contradicted. The evidence was permitted in order to aid the jury in determining the therapeutic value of the compound. These witnesses had nothing to say except to answer questions that were put to them on the subject of the curative properties of this compound, administered as these directions said it should be administered. They are the witnesses who were examined with reference to that. You are to be the judges of all that testimony. The Court is not going to interfere with you in that regard.

Counsel alluded to matters that are not in evidence. I interrupted at the time and excluded that matter. Whether it contains anything or not is not for your consideration, because it has been excluded by the Court.

Evidence has been introduced here as to the character for honesty and fair dealing of the defendant corporation. That is an element and a fact that may be taken into consideration by you as you would any other proper and legitimate testimony.

This is a criminal prosecution under a statute that makes it a misdemeanor to violate it, and the defendant is entitled to the benefit of any reasonable doubt that may arise out of the testimony in his favor. The presumption of innocence accompanies the defendant company as it would accompany an individual, and that presumption continues until it is shown by the testimony in the case to have been overcome. If you find that the facts and circumstances developed before you are as consistent with the theory of innocence as they are with the theory of guilt, the jury should acquit the defendant.

You will see that you are to decide, first, whether the statements in reference to the curative properties of this medicine were false. If they were false, did the defendant know them to be so, and, if the defendant knew them to be so,

were the statements made in such a reckless manner as a reasonable man would not have indulged in. From all the facts and circumstances in the case, you are to say whether the defendant is guilty or not guilty under this charge.

As far as the punishment is concerned, as stated by counsel, that is a matter within the discretion of the Court with which you have nothing to do. It is lodged with the Court to impose the fine, and not with the jury.

I do not know that I have anything else to say. The form of verdict has been prepared. If you find the defendant guilty sign the verdict as prepared. If you find the defendant not guilty insert the word "not" before the word "guilty" and return your verdict into Court.

The jury thereupon retired and, after due deliberation, returned into court with a verdict of guilty, and on December 28, 1917, the court imposed a fine of \$200 and costs. On January 18, 1918, the defendant company's bill of exceptions was allowed and filed, and the case is now pending on appeal in the United States Circuit Court of Appeals for the Eighth Circuit.

R. A. PEARSON, *Acting Secretary of Agriculture.*